Attorney General
Betty D. Montgomery

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August 14, 1996

Via Overnight Mail

Office of the Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: *In the Matter of Telephone Number Portability*, CC Docket No. 95-116, RM 8535

Dear Mr. Caton:

Enclosed please find the original and ~~ten~~ 16+1 copies of the **Comments of the Public Utilities Commission of Ohio Concerning the Federal Communications Commission Notice of Proposed Rulemaking in the Matter of the Telephone Number Portability** in the above-referenced matter. Please return a time-stamped copy to me in the enclosed stamped, self-addressed envelope.

Thank you for your assistance in this matter.

Respectfully submitted,

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cc: Competitive Pricing Division
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Telephone Number Portability,	)	CC Docket No. 95-116
Further Notice of Proposed Rulemaking	)	
	)	

COMMENTS OF THE PUBLIC UTILITIES COMMISSION OF OHIO

SUMMARY

The Public Utilities Commission of Ohio (PUCO) hereby submits its comments pursuant to the Federal Communications Commission's (Commission) Further Notice of Proposed Rulemaking (FNPRM) in CC Docket No. 95-116 (In the Matter of Telephone Number Portability). The PUCO generally agrees with the Commission's tentative conclusions identified in the FNPRM. The PUCO believes an allocation factor based on the number of local access lines is more appropriate than using gross revenues. Our primary concern is that the Commission not prescribe recovery mechanisms for the costs associated with local number portability. The allocation of these costs must be across all telecommunications carriers as defined by the Communications Act.[1] However, the ultimate recovery of these costs must be considered at the state level, where market, regulatory, public interest, and rate factors can be appropriately considered. Finally, the PUCO does believe that the Commission should continue in its leadership role of the First Report and Order in this proceeding and continue to promote

1 Refers to the Communications Act of 1934, as amended by, The Telecommunications Act of 1996.

the rapid and efficient roll-out of local number portability by focusing on the definition and proper allocation of costs across all telecommunications carriers.

I. INTRODUCTION

The Public Utilities Commission of Ohio (PUCO) hereby submits its comments pursuant to the Federal Communications Commission's (Commission) Further Notice of Proposed Rulemaking (FNPRM) in CC Docket No. 95-116 (In the Matter of Telephone Number Portability).

In the original Notice of Proposed Rulemaking in this docket, the Commission began an in-depth inquiry into the current technical status, the market demand, the regulatory concerns, and the need for further direction regarding number portability. Despite many comments suggesting a "not now" approach, the Commission, in it First Report and Order recognized the real need for number portability as soon as possible. In its First Report and Order, the Commission acknowledges the number portability "sufficient momentum" that exists in the states. FNPRM at NPRM Paragraph 46. To enhance this momentum, the Commission established number portability performance criteria and a bold implementation schedule. At the same time, the Commission allowed the states to developed the most appropriate regional or state-based database solutions. FNPRM at NPRM Paragraph 96. The PUCO applauds the Commission for its efforts. The Commission's strong leadership in setting the performance requirements and implementation deadlines, while recognizing the experience of the states as the best place to decide the actual database systems deployed will assuredly result in a more rapid and efficient implementation of nationwide number portability.

In our comments in this FNPRM, the PUCO urges the Commission to continue in its leadership role of establishing guidelines which will allow the states to implement number portability in a competitively neutral manner consistent with the public interest of our states. In this FNPRM, the Commission inquires about the definition, allocation, and recovery of costs associated with number portability. The PUCO believes that the Commission should use its leadership role to clearly *define and allocate* number portability costs in a competitively neutral manner. It is the states role to consider the *recovery* of number portability costs in a competitively neutral manner.

II. COST DEFINITION AND ALLOCATION

NPRM Paragraph 208:

The PUCO agrees with the Commission's tentative conclusion that costs may be placed into three categories, including: (1) shared facilities costs incurred by the industry in a region as a whole; (2) carrier-specific costs directly related to providing number portability; and (3) carrier-specific costs not directly related to number portability.

NPRM Paragraph 209:

The PUCO agrees with the Commission's tentative conclusion that section 251(e)(2) of the Communications Act applies only to number portability-specific costs and not to those carrier-specific costs which are not directly related to number portability such as network upgrades necessary to permit number portability (e.g. digital switches, SS7, and AIN).

The PUCO further agrees that section 251(e)(2) does not address recovery of costs from consumers. The important competitive concern of the Commission should be the proper allocation of costs across all telecommunications carriers. A single nationwide recovery mandate cannot

respond to the diverse nature of regulatory frameworks, carrier revenue and rate structures, network advancement levels, public interest objectives, and service histories in the various states. How carriers recover those allocated costs must be decided at the state level to effectively consider the myriad of variables that must be considered. States have well developed methods of recovery to handle costs such as those incurred in implementing number portability. The contentious issue that must be resolved to allow recoveries to take place is the proper allocation of the costs from the start. The Commission can greatly reduce the litigious nature of the states processes by asserting the proper cost allocation methodologies.

The PUCO believes the definition of "telecommunications carrier" according to Section 3 (44) of the Communications Act leaves little ambiguity in the use of the statutory language "all telecommunications carriers" as used in section 251(e)(2). With the noted exception of aggregators,[2] all providers of telecommunications services must share the appropriate costs of number portability. Some parties may argue that service providers which offer service primarily or exclusively through the reselling of LEC service[3] should be excluded from bearing the costs of number portability because number portability does not benefit them or their subscribers. The PUCO does not believe the Communications Act permits such exclusions, however, even if such exclusions were permitted under the Communications Act, we see no reason why the Commission should make those exclusions. To ensure competitive neutrality and rapid deployment of number portability, all carriers must share in the costs. By excluding non-facilities-based resellers

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2 The Communications Act of 1934, as amended by The Telecommunications Act of 1996. Section 3 [47 U.S.C. 153] (44). Aggregators, as defined in Section 226, are expressly excluded from the definition of "telecommunications carrier."

3 Such a provider is often referred to as a non-facilities based service provider.

from the cost allocations, the Commission would be discouraging facilities-based entry until a point in time when the majority of number portability costs had been borne by the ILECs. Furthermore, the PUCO believes that all carriers, even non-facilities carriers will benefit from the implementation of number portability and the resulting growth in competition. It must also be considered that most non-facilities-based carriers will eventually migrate to facilities-based operations as economies of scale and scope take effect much as was seen in the early years of IXC competition.

III. COST RECOVERY

NPRM Paragraph 210:

The PUCO agrees with the Commission's tentative conclusion that the cost recovery method for long-term number portability should comply with the same principles the Commission set forth for currently available number portability measures. Specifically, (1) a competitively neutral cost recovery mechanism should not give one service provider an appreciable, incremental cost advantage over another service the provider, when competing for a specific subscribers; and (2) a competitively neutral cost recovery mechanism should not have a disparate effect on the ability of the competing service providers to the earn a normal return. Though the PUCO agrees with these principles, we also strongly believe the selection and application of a recovery method must be done at the state level. Given all the variables that should come into play in the various states or regions, the correct competitively neutral solution may necessarily vary between states or regions.

NPRM Paragraph 211:

The PUCO agrees with the Commission's tentative conclusion that the pricing for state-specific databases should be governed by the pricing

principles established by the Commission in this proceeding. The PUCO would add that just as the Commission has permitted states to implement state-specific databases the Commission must also permit states to implement state-specific recovery plans guided by the cost allocation guidelines established in this proceeding.

In our original comments and reply comments in this docket, the PUCO supported the formation of a Federal/State Joint Board to resolve the number portability cost issues. In light of the Commission's bold schedule of implementation deadlines and our continued growth in understanding of the costs involved in number portability, the PUCO no longer believes a Federal/State Joint board is absolutely necessary. It is unlikely that a Joint Board could reach conclusion prior to the implementation deadlines outlined in the Commission's order.

NPRM Paragraph 213:

The PUCO believes total local access lines minus private lines and with a trunk equivalency addition would be a more appropriate allocation factor for number portability costs than gross revenues. Local access lines is a more tangible number than gross revenues. Adjusting those lines for trunk equivalency will assure that the number portability demand of high-end business users will be properly accounted for in the allocation.

A gross revenues allocator would encourage LECs to move revenues such that they would not be counted in the allocator. It is much more difficult to hide access lines. However, if the Commission should decide to use gross revenues as the allocator, the PUCO agrees with the Commission's belief that charges paid to other carriers, such as access charges, should be subtracted from the gross revenues determination of a particular carrier.

IV. SHARED FACILITIES COSTS

(A) General

NPRM Paragraph 215:

The PUCO does not believe it is necessary or prudent for the Commission to prescribe the particular cost recovery mechanism by which LECs will recover the cost of shared number portability facilities. The Commission should endeavor to establish the costing principles that will guide the allocation of costs across all telecommunication carriers. Recovery of costs in a competitive market is correctly left to the market. Whether a LEC is able to recovery its shared facilities costs through end-user rates, tariffed interconnection rates, negotiated interconnection agreements, or increased operating efficiencies will depend on the market and the regulatory framework under which the LEC operates. The cost of implementing and providing number portability must be seen as part of the cost of doing business under the new telecommunications market paradigm.

NPRM Paragraph 216:

The Commission tentatively defines three categories of number portability costs of facilities shared by all carriers: (a) non-recurring costs: (b) recurring costs; and (c) costs for uploading, downloading, and querying. It is not clear to the PUCO that there needs to be a distinction between recurring costs and uploading/downloading/querying costs (b & c above). Costs for uploading, downloading, and querying seem to naturally be recurring costs. Unless there is a need to allocate the actual costs of uploading, downloading, and querying caused by each carrier for a particular database, there appears to be no need to separate these costs from the other recurring costs. To the degree that the costs are allocated across all telecommunications carriers

according to some allocator (such as the PUCO's recommended access lines allocator) there should be no need to allocate the actual costs of uploading, downloading, and querying caused by each carrier for a particular database.

The PUCO believes that all carriers operating in areas where number portability is offered will benefit from the availability of that number portability. Therefore, all telecommunications carriers operating in an area where number portability is offered should share in the non-recurring and recurring shared facilities costs of number portability in proportion to each carrierís adjusted number of local access lines. Limiting allocation of costs to only those carriers using the database(s) would likely discourage early facilities-based competitive entry into the local market until a point in time when the majority of non-recurring number portability costs had been borne by the ILECs. A mechanism to ensure that ILECs are not stuck with the entire non-recurring shared facilities costs must be established.

(B) Non-Recurring Shared Facilities Costs

NPRM Paragraph 217:

The database administrator(s) should recover the costs of shared facilities through charges assessed on all carriers whether or not they are using the database. As stated above, number portability will benefit all carriers by promoting competition and creating choices not only for end-users but for competing carriers as well. Most if not all carriers, are likely to utilize the number portability databases at some time whether now or in the more distant future. Furthermore, if the costs are not assessed to all carriers from the beginning, but only to those carriers that utilize the databases, there is an incentive to not use the database until, at least, the start-up costs of building the database(s) have been allocated to those carriers already using the database(s).

The allocation of the non-recurring costs must not be static. To effectively allocate start-up or non-recurring costs across all telecommunications carriers in a LNP database region, a recovery and true-up period must be established. All telecommunications carriers that serve in a particular market anytime within a set long-term recovery period must contribute their fair share to the shared facilities non-recurring costs, regardless of when they enter the market within the long-term recovery period. At the end-up of the recovery period, a true-up based on gross revenues will ensure that all shared facilities non-recurring costs are recovered and that all carriers share in the costs in a competitively neutral manner. Without such a long-term recovery mechanism new entrants will be encouraged to delay entry until the non-recurring costs have been borne by other carriers. A proper mechanism might set a long-term recovery period of 7 years. A forecast of market entry over those years could be used to establish a cost allocation (based on a projection of gross revenues) for all telecommunications carriers serving in the particular area. It is imperative that the recovery period be sufficiently long so as to remove any incentive for new entrants to delay entry. Whether the non-recurring costs are assessed to carriers through a one-time charge or over a period of several charges should be a function of the magnitude of the costs involved, the public policy concerns, and the business decisions of the specific carriers.

(C) Recurring Shared Facilities Costs

NPRM Paragraphs 218 & 219:

If a credible method for determining usage costs and measuring specific carrier usage can be developed, assuming that method demonstrates an appreciable variance in usage costs between carriers then it might be appropriate to assess the uploading, downloading and querying costs to

carriers based on their actual usage. However, in the absence of such methods to determine usage costs and measure usage, the PUCO believes that including the shared costs for uploading, downloading and querying in the recurring charges assessed to telecommunications carriers in proportion to their gross revenues would be the most administratively manageable way to collect the recurring costs.

V. CARRIER- SPECIFIC COSTS

NPRM Paragraphs 221 - 229:

The PUCO does not believe it is appropriate for the Commission to prescribe a recovery mechanism for carrier-specific costs. How these costs are recovered should depend on many factors and not be dictated by a national policy that cannot take into account a carriers specific market forces, regulatory obligations, state rules and statutes, and or service history. The PUCO believes that both the direct carrier-specific costs and the indirect carrier-specific costs should be treated as any other costs a carrier bears as a result of upgrading its network and expanding the capabilities and characteristics of its basic service offering. These costs are clearly costs of doing business in this changing market. Number portability should not been seen as an advanced service, but rather a soon to be new capability of basic service.

VI. PRICE CAP TREATMENT

NPRM Paragraph 230:

The PUCO is first opposed to any mandated recovery mechanism but putting that concern aside, if costs are recovered directly through end-users whether price-cap regulated carriers should treat such costs as exogenous is a significant concern. The PUCO would argue that because the mandate to

provide number portability is placed on all carriers, and because the costs are to be allocated in a competitively neutral manner across "all telecommunications carriers" there should be no need to treat these costs as exogenous. Since all carriers will bear their fair share, no carrier will be disadvantaged.

The Commission's proposed exogenous factor adjustment, if it is intended to be applied on an intrastate basis, is another example of why the cost recovery mechanisms should be left to the states to decide. Ameritech Ohio, for example, is currently operating under an intrastate price cap plan which was agreed to by numerous other parties, and which was the subject of an appeal to the Ohio Supreme Court. This plans provides that an exogenous adjustment should not be made unless it will "disproportionately affect the Company." Ameritech Price Cap Plan at p 41 (attached). The PUCO must be able to implement this agreed to price cap plan, and must be able to make any determinations necessary under such plan without regard to general policies made on a national level which may not be applicable to state specific situations. Should the PUCO determine that these costs are not appropriate for a price cap adjustment under Ameritech Ohio's agreed to price cap plan, customers would not be forced to pay higher rates, which may be the outcome if the Commission attempted to force this type of adjustment in a situation in which it may not be appropriate.

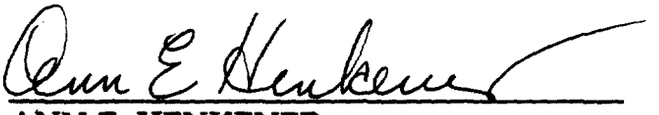
VII. CONCLUSION:

The PUCO applauds the Commission on its First Report and Order in this proceeding. We believe it is both progressive and accommodating. The PUCO would ask the Commission utilize the same approach in its order on the cost issues associated with local number portability. While the PUCO

believes the cost definitions may actually be more delineated than necessary, we generally agree with the Commission's tentative conclusions on those definitions. The PUCO's primary concern is that the Commission not prescribe ultimate recovery mechanisms to be applied to the relevant carriers. Rather the PUCO believes the Commission should focus on the definition and allocation of the costs across the telecommunications carriers. How the telecommunications carriers recover these costs must be determined at the state level, where market factors, regulatory structures, existing agreements, public interests, and rate levels can be appropriately considered.

Respectfully submitted,

BETTY D. MONTGOMERY
Attorney General of Ohio



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Before

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of the Ohio Bell Telephone Company For Approval of an Alternative Form of Regulation.	)	Case No. 93-487-TP-ALT
In the Matter of the Complaint of the Office of the Consumers' Counsel, Complainant, vs. Ohio Bell Telephone Company, Respondent, Relative to the Alleged Unjust and Unreasonable Rates and Charges.	)	Case No. 93-576-TP-CSS

STIPULATION AND RECOMMENDATION

DATED: September 20, 1994

B. The exogenous impact adjustment must be a direct result of a Commission-sanctioned, nationally imposed change in generally accepted accounting principles or the Uniform Systems of Accounts; or a change in a rule or law imposed by, but not limited to, Congress, the Department of Justice, the Federal Trade Commission, the Federal Communications Commission, the Ohio General Assembly, or the Commission;

C. The exogenous impact adjustment to the extent that it is reflected in the GDP-PI must disproportionately affect the Company; and

D. The exogenous impact adjustment should be calculated on the basis of the most recent historical data.

The provisions of this Paragraph 19 shall apply for the duration of the Plan.

20. If a new tariffed service proposed to be offered after the effective date of the Plan has privacy implications, is essential to public safety, or impacts access to or usage of 9-1-1 type services, it shall be filed with the Commission and served upon the Stipulating Parties 30 days prior to the effective date. The Company shall thereafter promptly respond to any Stipulating Party's request for information regarding the proposed new

service and will meet with any such party to discuss the proposed new service within five (5) business days of receiving the request for such a meeting.

The tariff shall go into effect on the 31st day unless the Commission suspends the tariff for an additional 180 days for investigation. Should the Commission subsequently decide to hold public hearings, it may suspend the tariff for an additional sixty (60) days beyond the 180 day investigation period. If the Commission suspends the tariff for investigation, the Company shall respond expeditiously and in good faith to requests for information about the new service. Specifically, the Company shall respond within seven (7) business days to discovery requests from any Stipulating Party who has been granted intervention or who has a request to intervene pending in the docket wherein the proposed new service is being investigated, and shall make available to any such party, upon request, all information about the new service that has been provided to the Commission Staff. The Company reserves the right to seek proprietary treatment with regard to all such information and responses to discovery requests; however, the Company will allow immediate access to such information to any such Stipulating Party that signs the proprietary agreement in the form of Exhibit H of the Plan or in such other form as may be agreeable. The Stipulating Parties specifically agree to respond within seven (7) business days to discovery requests from the Company if they

have been granted intervention or have a request to intervene pending in such docket. In addition, the Company will agree to the expeditious information and discovery process set out in this paragraph with any other person who has been granted intervention or who has a request to intervene pending in the docket wherein the proposed new service is being investigated provided, however, that such other person first agrees to reciprocate and abide by the same process when responding to information and discovery requests made by the Company. Nothing in this paragraph shall obligate the Staff to respond to any information or discovery requests, on an expedited basis or otherwise, or to enter into a proprietary agreement.

At the end of the investigatory period, and hearing period if applicable, the tariff shall go into effect unless rejected by the Commission.

A service shall be considered to have privacy implications only if:

A. it impacts the privacy of an individual because it conveys personal information about that individual; and

B. the individual whose privacy is impacted is an individual other than: (1) the customer purchasing the

service, or (2) a person using the service purchased by the customer.

For those new tariffed services that do not have privacy implications as defined above, are not essential to public safety, and do not impact access to or usage of 9-1-1 type services, a proposed tariff and supporting information shall be provided to the Commission Staff, and the OCC on a proprietary basis, at least 30 days prior to the effective date. The information provided to the Commission Staff, shall be sufficient to permit the Staff to conduct a review to determine (1) whether the service is priced above LRSIC plus a common overhead allocation as described in Paragraph 14 supra and, if applicable, that total family revenues exceed total family costs for the service as described in Paragraph 13 of this Stipulation; (2) whether all required imputation tests for the service are satisfied; (3) whether the service has privacy implications as defined above or is essential to public safety or impacts access to or usage of 9-1-1 type services; and (4) whether the service violates a statute, Commission rule, a Commission policy or precedent contained in a previous order, or any provision of this Stipulation provided, however, that if the price of any new service meets criteria (1) and criteria (2), then the price of the service shall not be used as a basis for determining that the service violates a statute, Commission rule, or Commission policy or precedent.

IV. Conclusion and Recommendation

The undersigned respectfully join in requesting the Commission to issue its Opinion and Order approving and adopting this Stipulation and Recommendation, in accordance with the terms set forth above, and making this Stipulation and Recommendation a part of the record herein. The undersigned hereby stipulate and agree and each further represents that it is authorized to enter into this Stipulation this 20th day of September, 1994.

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AMERITECH OHIO

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